(8)

Single Bench

**IN THE HIGH COURT OF JUDICATURE AT BILASPUR**

MISCELLENEOUS APPEAL NO. 1012 /2004

**APPELLANT (S)**

1. Chief Medical and Health Officer, Raigarh

**RESPONDENT(S)**

2. Ramprasad, S/o Munuram Nayak, Driver, Primary Health Center Chaple.

3. State of Chhattisgarh Through Collector Raigarh

P.R. No.....
Presented by Shri.....
dated.....

VERSUS

**RESPONDENT(S)** :

1. Smt. Shyam Bai W/o Late Devlal Government Employee, Primary Health Centre, Raigarh (CG)

**APPLICANT(S)**

2. Uttara Kumari D/o Late Devlal Patel
3. Mithalesh D/O Late Devlal Patel - (Minor)
4. Bhupendra S/o Late Devlal (Minor)
5. Sarswati D/O Late Devlal (Minor)

No. 3, 4 & 5 : Through Guardian Mother Smt. Shyam Bai

All R/oO Village : Chhaple, Tahsil : Kharsia, District: Raigarh, Chhattisgarh.

शपथ आयुक्त
जिला रायपुर (छ.ग.)
बिलासपुर तहसील केन्द्र

2.

(4)

**APPEAL UNDER ORDER 43 RULE 1(D) OF THE CODE OF CIVIL PROCEDURE**

(3)

AFR

(24)

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**MISC.APPEAL NO.1012/2004**

Chief Medical & Health Officer and others

Vs.

Smt. Shyam Bai and others

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**Appearance :**

Shri Akhil Agrawal, Panel Lawyer for the appellants/State.

Smt. B.R.Maity, counsel for respondents No. 1 to 5.

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**ORAL ORDER**

(21.6.2006)

**SUNIL KUMAR SINHA, J.**

(1) This order shall dispose of M.(C.)P.No.1421/2004 which is an application for condonation of delay in filing this Misc. Appeal, filed under Order 43, Rule 1 (d) of the Code of Civil Procedure. The aforesaid appeal has been filed against the order dated 7.2.2004 passed by the IVth Motor Accident Claims Tribunal, Raigarh in Misc.Claim Case No. 1/2003. By the said order, the Claims Tribunal has dismissed an application filed under Order 9, Rule 13 of the C.P.C. for setting aside the ex-parte award dated 29.11.2002. The appeal is barred by 136 days of limitation.

(2) The brief facts are that the Claim Case No.73/2002 was fixed for evidence on 9.10.2002 before the Claims Tribunal. On the said date, the appellants herein, who were the non-applicants before

the Claims Tribunal, remained absent and the Tribunal proceeded ex-parte against them. Ultimately, after expediting the hearing, after almost about 1 ½ month of the said date, an ex-parte award to the tune of Rs.4,12,000/- was passed by the Tribunal on 29.11.2002. This was challenged by the appellants before the Tribunal by filing an application under Order 9, Rule 13 C.P.C. and the said application was dismissed by the Tribunal on 7.2.2004. It is against the said dismissal, the appellants have filed this Misc. Appeal which is barred by limitation of 136 days for which an application for condonation of delay under Section 5 of the Limitation Act has been filed vide M.(C.)P.No.1421/2004.

(3) Learned counsel for the appellants submits that the delay in filing the appeal is neither deliberate nor intentional but, due to time consumed in taking sanction to file the appeal from the Law Department, which was granted on 20.5.2004 and further, in appointment of Officer In-charge of the case and other ministerial works, the appeal could not be filed in time. He prays for condoning the delay of 136 days.

(4) On the other hand, learned counsel for the respondents opposes the prayer.

(5) I have heard learned counsel for the parties at length and have also perused the records of Misc. Appeal.

(6) So far as Section 5 of the Limitation Act is concerned, it has been held by the Apex Court in the matter of ***Ramlal and others, Appellants Vs. Rewa Coalfields Ltd., reported in AIR 1962 S.C. 361*** that in construing Section 5, it is relevant to bear in mind two

important considerations. The first consideration is that the expiration of the period of limitation prescribed gives rise to a right in favour of the decree holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree holder has obtained a benefit under the law of Limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree holder by lapse of time should not be light heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice.

This has been has been held by the Apex Court after quoting an observation made by the Madras High Court in the matter of ***Krishna Vs. Chathappan, ILR 13 Madras 269*** which reads as under :

> *"Section 5 gives the Court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words 'sufficient cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bonafide is imputable to the appellant."*

(7) The Apex Court again held in the matter of ***The State of West Bengal Vs. The Administrator, Howrah Municipality and***

***others reported in (1972) 1 SCC 366*** that the words "sufficient cause" in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bonafide is imputable to a party (Please see Para 30 of the said judgment).

(8) It has also been held in the matter of ***N.Balakrishnan VS.M.Krishnamurthy (1998) 7 SCC 123*** that " the law of limitation is founded on public policy. It is enshrined in the maxim "***interest reipublicae up sit finis litium"*** ( It is for the general welfare that a period be put to litigation). The rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time". The Apex Court also held that "the length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes, delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory".

(9) In the present case, the delay is of 136 days and the explanation offered for the delay is that all the time was consumed in obtaining sanction to file appeal from the Law Department and thereafter in appointment of the Officer In-charge of the case and other ministerial works. Learned counsel for the appellants could not point out any statutory provision, which may show that the sanction to file an appeal in such matter is legislatively required.

(10) It appears that such sanction etc. are the internal exercises of the Government and in doing such exercise, the authorities of the State have utilized more than sufficient period. The yardstick to test the sufficiency of cause for condoning the delay under Section 5 of the Limitation Act in the matter of State Government or the Central Government is not different and where the Government is to file appeal or other proceedings, in which a period of limitation is prescribed, it is the duty of the Government and its officials to be more vigilant to make all the requisite exercises in time so that, the appeal or proceedings are preferred within the period of limitation, so prescribed by the law. If in doing so, prompt steps are taken and some delay appears on record due to unavoidable circumstances, then only it would amount to a "sufficient cause" for not preferring the appeal or the proceedings in time and an extension under Section 5 is possible.

(11) In this case, there is no reasonable explanation for the delay of 136 days as each day's delay has not been explained and the explanation offered by the State in 2 lines in vague and general manner is not acceptable.

(12) I do not find any merit in the application filed under Section 5 of the Limitation Act and the same is dismissed. In consequence, the appeal also stands dismissed.

Sd/-
Sunil Kumar Sinha
Judge

Sumita